

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2645 of 1994

with

SPECIAL CIVIL APPLICATION No 2649 of 1994

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

1 & 2 : Yes 3 to 5 :No

FOOD CORPN. OF INDIA EMPLOYEESASSOCIATION

Versus

FOOD CORPN. OF INDIA

Appearance:

1. Special Civil Application No. 2645 of 1994
MR TR MISHRA for Petitioner
MR PM THAKKAR for Respondent No. 1
MR MUKUND M DESAI for Respondent No. 4, 5
 2. Special Civil ApplicationNo 2649 of 1994
MR KETAN A DAVE for Petitioner
NOTICE NOT RECD BACK for Respondent No. 1
MR PM THAKKAR for Respondent No. 2
MR MUKUND M DESAI for Respondent No. 5
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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 19/03/98

ORAL JUDGEMENT

1. Both these petitions challenge the revised rates of premium in respect of the Group Insurance Scheme for employees of Food Corporation of India. The scheme is by the Life Insurance Corporation of India and the premium has been revised by the Life Insurance Corporation of India. LIC's Group Savings Linked Insurance Scheme (GSLIS) was adopted by the Food Corporation of India by circular dated 19.12.1986 annexure A to the petition. Sub-para (i) of para 3 provides that the Scheme is optional to the serving employees and the option is required to be exercised if they are not willing to join the Scheme and in case of future employees, it is to be a condition of service to join this Scheme. Sub-para (iii) provides that no person shall withdraw from the Scheme while he is in the service of the Corporation and is an eligible member under the Scheme.

2. The said Scheme was revised by FCI Circular dated 30.4.1990 at annexure B. It recites that the Government of India and LIC have revised the insurance cover and monthly premiums for Central Government employees and Public Sector employees respectively. It further states that as per the Memorandum of Understanding dated 14.1.1989, reached between the National Coordination Committee of the FCI employees and the Management of the FCI, it was decided that the amount of insurance cover in the existing Group Insurance Scheme would be doubled and the cost would be entirely borne by the employees concerned. The matter was examined in consultation with the LIC authorities and it was decided to increase the amount of the insurance cover and monthly premium payable by the employees after assessing the response from the employees.

Para 4 is regarding eligibility which provides that the revised insurance cover is compulsory to all category III and IV employees, who had opted for the revised pay scales on Industrial DA pattern as per the MOU dated 14.1.1989. It further provides that the revised insurance cover is optional for all category III and IV employees who are still continuing in the 3rd Pay Commission (Central) DA pattern and whose pay and allowances are due for revision; the revised premium is optional for all category I and II officers and the Scheme is compulsory to all the employees appointed on or after 1.3.1990 and the serving employees were required to

exercise option only if they were not willing to join the revised Scheme.

3. It is, thus, clear that the Scheme is optional to the existing and serving employees to opt or not to opt and the only condition is that once they opt for the Scheme, they will not be allowed to withdraw from the Scheme. So long as the Scheme remains the same, the employees who have opted for it, are bound to continue. Similarly, the new employees who are made the members of the Scheme compulsorily will also continue to be the members of the Scheme compulsorily, but it is the Scheme for which they have opted or which exists at the time of their entry in service. If at any time, the Scheme is to be revised, the existing employees have to be given an option whether they want to continue to be the members and opt for the Scheme or it can be even by way of a negative option as has been done earlier when the employees who wanted to continue even at the revised Scheme need not give the option for such continuation and the options should be exercised by only those who do not want to continue to be the member of the Scheme which is on account of revision of the scheme. Neither the LIC nor FCI can impose new or revised condition on the existing and serving employees who do not want to be members of the Scheme on the revision of premium. So long as the same Scheme continues, the members who have opted are bound to continue so long as they are in service, but if such Scheme is to be revised without their consent, they cannot be compelled to continue to be the members of the revised Scheme.

4. The Scheme is from year to year. The LIC also cannot be compelled to continue the same Scheme and the same premium from year to year. It is entitled to revise the premium and the terms and conditions and it cannot be compelled to continue the earlier terms and conditions beyond the yearly period of the Scheme. On the expiry of that period, the LIC would be entitled to revise the premium and the terms and conditions. The FCI and the employees would also be entitled to opt and say 'no' to such revised Scheme. It is purely a matter of contract between the parties and both the parties must arrive at an agreement on the revised terms and conditions and revised premium.

5. In the present case, since the revision of premium is made unilaterally, the employees are entitled to have an option to say 'no' to continue to be the member of such revised Scheme and it cannot be imposed on such unwilling employees.

6. In the result, both these petitions succeed and rule is made absolute by directing that the existing and serving employees of the Food Corporation of India will be entitled to exercise their option latest by 31st July 1998 and such option shall be in similar form as was prescribed when the scheme was earlier revised and such option is required to be exercised only by the serving employees only if they are not willing to join the revised Scheme and such option should be exercised by them on or before 31st July 1998. If no such option forms are received from the employees by that date by the concerned head of office in which they are working, it will be presumed that they are willing to join the revised Scheme and accordingly, premium will be recovered from them and the option exercised will be final and irrevocable. No order as to costs.

mhs/-